

Investigation by the Department on its own Motion into the
Appropriate Pricing, based upon Total Element Long-Run
Incremental Costs, for Unbundled Network Elements and
Combinations of Unbundled Network Elements, and the
Appropriate Avoided Cost Discount for Verizon New England,
Inc. d/b/a Verizon Massachusetts' Resale Services.

August 8, 2001

On July 5, 2001, Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”) filed with the Department of Telecommunications and Energy (“Department”) a Motion to Compel Discovery (“VZ Motion”) in regard to AT&T Communications of New England, Inc.’s (“AT&T”) responses to 63 of Verizon’s Information Requests. On July 12, 2001, AT&T filed with the Department an Opposition to Verizon’s Motion to Compel (“AT&T Opposition”). On July 23, 2001, Allegiance Telecom of Massachusetts, Inc., Covad Communications Company, El Paso Networks, LLC, and Network Plus, Inc. (collectively, “CLEC Coalition”) filed with the Department a Motion to Compel Discovery (“CLEC Motion”) in regard to Verizon’s responses to three Information Requests. On July 31, 2001, Verizon filed with the Department an Opposition to the CLEC Coalition’s Motion to Compel (“VZ Opposition”).

II. STANDARD OF REVIEW

With respect to discovery, (i.e., information requests), the Department's regulations provide:

The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of the issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled. 220 C.M.R. § 1.06(6)(c)1.

Hearing officers have discretion in establishing discovery procedures and are guided, but not bound, in this regard by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 et seq. 220 C.M.R. § 1.06(6)(c)2. Rule 26 provides that:

Parties may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Mass. R. Civ. P. 26(b).

III. VERIZON MASSACHUSETTS' MOTION TO COMPEL

A. INTRODUCTION

On May 17 and 18, 2001, Verizon served AT&T with its First, Second and Third Sets of Information Requests in this proceeding. AT&T responded to 256 of the 258 requests on May 29, 2001.¹ On July 5, 2001, Verizon filed with the Department a Motion to Compel Discovery in regard to AT&T's responses to 63 Information Requests in the First and Second Sets, specifically VZ-ATT 1-16, 1-20, 1-21, 1-23 through 1-26, 1-34, 1-35, 1-38, 1-39, 1-57

¹ AT&T has since answered the two remaining questions, and it supplemented some of its responses to the Second Set of Information Requests on July 3, 2001 (AT&T Opposition at 3).

through 1-60, 1-65 through 1-68, 1-70 through 1-80, 1-87 through 1-90, 1-103, 1-112, 1-114 through 1-128, 1-130, 1-131, 1-135, 2-1, 2-3, 2-4, 2-6, 2-11, 2-15, 2-32, 2-62, and 2-91. On July 12, 2001, AT&T filed its Opposition to Verizon's Motion. The majority of Information Requests that are the subject of the Motion seek information about AT&T's network, and about inputs and assumptions of previous versions of the HAI Model AT&T has submitted in this proceeding; Verizon also refers to AT&T responses to various requests that Verizon considers incomplete or non-responsive.

B. POSITIONS OF THE PARTIES

1. Verizon

Verizon requests that the Department order AT&T to provide complete responses to all of the Information Requests at issue. Verizon argues that the information requested of AT&T via this discovery is integral to Verizon's review and analysis of the HAI 5.2a-MA Model, sponsored by AT&T to estimate the cost of providing Unbundled Network Elements² ("UNEs") (VZ Motion at 1-2).

In propounding the Information Requests, Verizon states that it is seeking documentation necessary to analyze the HAI 5.2a-MA Model and the propriety of its platform methodologies, input values and accuracy of the cost estimates it produces (*id.* at 2). According to Verizon, without this information neither Verizon nor the Department can fully evaluate AT&T's cost

² Verizon states that in the absence of meaningful responses it would request that the Department strike those portions of AT&T testimony that refer to or rely on the HAI 5.2a-MA Model (VZ Motion at 3 n.3). Based on our ruling below, we do not find it appropriate to strike any of AT&T's testimony.

model, and the lack of appropriate response by AT&T hampered Verizon's preparation of Rebuttal Testimony³ and is denying Verizon its due process rights to cross-examine witnesses under G.L. c. 30A, § 11(3) (id. at 2-3, 5).

Verizon states that AT&T inappropriately objected to Information Requests VZ-ATT 1-38, 1-39, 1-70 through 1-79, 1-114 through 1-128, 1-131, 1-135, 2-1, 2-15 and 2-91 on grounds that information on AT&T's network, including engineering practices and costs, is not relevant to Verizon's forward-looking economic costs to provide UNEs (VZ Motion at 5, 8). Verizon states that such objection is without merit, because AT&T's network practices and costs are directly relevant as a benchmark for comparison with the HAI 5.2a-MA Model's input values, engineering assumptions, and cost estimates (id. at 9).

Verizon states that AT&T also mistakenly objects on relevance grounds to Information Requests VZ-ATT 1-34, 1-35, 1-65, 1-66, 1-68, 1-80, 1-87 through 1-90 and 1-112, seeking information about changes in assumptions, default values and other inputs of earlier versions of the HAI Model in comparison to the HAI 5.2a-MA Model (id. at 9). Verizon asserts that HAI 5.2a-MA is predicated upon, and in many respects the same as, earlier versions (id. at 11). Because the HAI Model is "evolutionary" in nature, Verizon reasons, it is not appropriate to analyze it in isolation, and Verizon is entitled to explore the bases for, and propriety of, any changes (id. at 11). Further, Verizon argues, because the Department rejected an earlier version of the HAI Model, "reasoned consistency" would require the Department to reject this version absent a detailed comparison between the rejected model and the new version (id.

³ Parties filed Rebuttal Testimony on July 18, 2001.

at 11, citing Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 104 (1975)).

Verizon further asserts that “throughout its responses” to Verizon’s Information Requests, AT&T fails to provide detailed descriptions as Verizon requested (VZ Motion at 12). In the opinion of Verizon, AT&T has avoided answering or provided incomplete, irrelevant or non-responsive answers to the following:

VZ-ATT 1-16. Verizon asserts that AT&T did not provide information regarding how data was created and used in the HAI 5.2a-MA Model⁴ (id. at 12).

VZ-ATT 1-67. Verizon asserts that AT&T failed to provide a simple yes or no answer to its inquiry regarding Dr. Mercer’s position (id. at 13).

VZ-ATT 1-20, 1-21, 1-23, 1-25, 1-26, 1-82, 1-83, 2-4, 2-32, 2-62. Verizon states that AT&T fails to provide requested materials, claiming that the materials are proprietary information of an outside vendor and/or are commercially or otherwise available (id. at 13-14). Verizon argues that the requested information involves key inputs into the HAI 5.2a-MA Model and it is AT&T’s responsibility, in support of its case, to ensure that the HAI Model’s underlying assumptions and data are made available to the Department and all parties in the proceeding (id. at 14-15). Verizon therefore requests that the Department order AT&T to make necessary arrangements with its vendors to provide the information.

VZ-ATT 1-57 through 1-60. Verizon states that AT&T improperly refused to respond to Information Requests regarding the owners’ and AT&T’s rights and terms of use for the

⁴ AT&T filed a Supplemental Response to VZ-ATT 1-16 on July 13, 2001.

HAI 5.2a-MA Model that will disclose any bias or use restrictions, which would affect Department consideration of whether that model may be relied upon (id. at 15).

VZ-ATT 1-24, 1-103, 1-130, 2-3, 2-4, 2-6, 2-11. Verizon asserts that AT&T provided unresponsive answers by referring to documents that do not answer the question, ignoring key elements of the question, or inappropriately objecting (VZ Motion at 15).

2. AT&T

In its Opposition, AT&T asserts that Verizon's Motion to Compel is without merit and attempts to force AT&T to divert resources to discovery that imposes substantial and undue burden, yet is not meaningfully connected to real issues in the proceeding (AT&T Opposition at 4). Moreover, AT&T asserts that Verizon is hypocritical, taking inconsistent positions depending on whether it is seeking or resisting discovery (id. at 5, 6, 9, 12, 14, 16, 19, 20). AT&T thus requests that the Department deny the Motion in total (id. at 4).

With regard to Information Requests involving AT&T's network, AT&T states that because it does not have a forward-looking local services network in place, its network is not an issue in this case; the information relating to it is irrelevant to the issues in this case and Verizon's evaluation of the HAI Model; and that it would be unduly burdensome to respond to Verizon's broad inquiries about it (id. at 4-5). While Verizon's existing network is relevant to this proceeding because of Verizon's reliance in its own cost studies on its historical embedded costs, AT&T states, information about particular facets of AT&T's network is not likewise relevant, because this data is not used in the HAI 5.2a-MA Model it is sponsoring (id. at 5-6).

With regard to Information Requests on earlier versions of the HAI Model, AT&T

states that it is only sponsoring the HAI 5.2a-MA Model filed in this proceeding, and prior versions of the HAI Model are not at issue or relevant (id. at 7). In addition, AT&T states, it would be unduly burdensome to gather information about previous models used over the past five years in California, New Jersey, New York, Pennsylvania, Vermont, or elsewhere (AT&T Opposition at 6-7). AT&T further asserts that Verizon is mistaken in its argument that “reasoned consistency” requires examination of prior models. To the contrary, AT&T states, the Department’s obligation in a rate-setting proceeding is to make findings based on the factual record before it (id. at 8).

AT&T states that the Direct Testimony of Robert A. Mercer and Direct Testimony of John C. Donovan clearly explain the differences between the HAI Model submitted in this docket and the model submitted in the Consolidated Arbitrations docket⁵ (id. at 9). However, AT&T states, Verizon’s questions also would have AT&T undertake burdensome comparisons to models filed in other jurisdictions under widely varying circumstances (id. at 9-10).

Regarding the remaining Information Requests at issue, which Verizon asserted were answered with incomplete, irrelevant or non-responsive information, AT&T states that with the exception of the supplemented VZ-ATT 1-16, Verizon’s complaints are procedurally improper and have no merit (id. at 10). First, AT&T states that although the Department’s ground rules for this docket require the parties to attempt to resolve discovery disputes before filing a motion to compel,⁶ Verizon failed to “meaningfully” consult with AT&T on 21 of the Information

⁵ Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94.

⁶ Hearing Officer Memorandum ¶ III.2, D.T.E. 01-20 (February 9, 2001).

Requests at issue in the Motion,⁷ because Verizon merely mentioned in a June 18, 2001 letter to AT&T's counsel⁸ that it had unspecified "concerns" with them, and AT&T is not sure what those concerns are (AT&T Opposition at 10-11). In any case, AT&T further claims, AT&T has made appropriate objections or has provided fully responsive answers to the 21 questions (id. at 11). AT&T addresses Verizon's specific complaints about these Information Requests as follows:

VZ-ATT 1-67. Verizon requested that AT&T explain its answer in detail; thus a response beyond yes or no was appropriate (id. at 12).

VZ-ATT 1-20, 1-21, 1-23, 1-25, 1-26, 1-82, 1-83, 2-62. AT&T maintains that Verizon is not entitled to proprietary data that AT&T does not possess and is not legally entitled to provide, but states that AT&T has been and remains willing to help Verizon make arrangements to review the commercially available data⁹ (id. at 12). AT&T notes that VZ-ATT 1-20 is inappropriately included in this category, because AT&T answered the question, which did not call for production of proprietary data (id. at 12 n.2).

VZ-ATT 2-4, 2-32. AT&T states that it would be unduly burdensome to produce voluminous documents that are available from the United States Census Bureau or a public

⁷ VZ-ATT 1-20, 1-21, 1-23 through 1-26, 1-57 through 1-60, 1-67, 1-82, 1-83, 1-103, 1-130, 2-3, 2-4, 2-6, 2-11, 2-32, and 2-91.

⁸ Letter from Bruce Beausejour, Verizon, to Ken Salinger, AT&T, June 18, 2001.

⁹ AT&T asserts that Verizon is aware that geocoding data provided by PNR Associates, Inc., is available from PNR's successor, TNS, via remote electronic access, and that if Verizon wanted to see the data, it could have already done so (AT&T Opposition at 13).

library (id. at 14).

VZ-ATT 1-57 through 1-60. AT&T states that the ownership of the HAI 5.2a-MA Model and legal rights to release it are irrelevant in this proceeding (id. at 15).

VZ-ATT 1-24, 1-103, 1-130, 2-3, 2-6, 2-11. AT&T states that its answers to 1-24, 1-103, 2-3 and 2-6 were fully responsive. The response to 1-24 refers to portions of the Model Description that provide the information requested (AT&T Opposition at 15). Regarding 1-103 and 2-3, AT&T states it explained why it is not possible to provide the information requested (id. at 16-17). Regarding 2-6, AT&T states that it provided a full explanation of development of distribution and feeder sharing fractions as requested.

Regarding 1-130, AT&T states that providing the requested "cost of money" used by AT&T in its Total Incremental Cost Model ("TICM") would be burdensome, because the model has not been used in years, and the information is thus irrelevant (id. at 17). Regarding 2-11, AT&T states that model inputs that were never used in AT&T's model are not relevant to this proceeding or they would have actually been used (id. at 18). Further, AT&T states that it would be impossible to determine every potential input that may have been considered in development of the model (id.).

C. ANALYSIS AND FINDINGS

AT&T asserts that the Department should not take action on 21 of the disputed Information Requests because inclusion of these requests in Verizon's Motion violates the ground rules for this docket that require the parties to attempt to resolve discovery disputes before filing a motion to compel. Although it appears that Verizon failed to consult with

AT&T regarding VZ-ATT 1-20, 1-21, 1-23 through 1-26, 1-57 through 1-60, 1-67, 1-82, 1-83, 1-103, 1-130, 2-3, 2-4, 2-6, 2-11, 2-32, and 2-91, beyond mentioning in a letter that it had "concerns" with them, AT&T was aware that these responses were in dispute. If the parties were to consult at this point, and no agreement reached, the result would be a redundant motion to compel before the Department. Therefore, as there is no indication the parties would otherwise come to a resolution on these particular questions, these Information Requests are included in this ruling. In future motions to compel discovery in this proceeding, the movant must make a showing that it made a good faith effort to resolve any discovery dispute prior to filing the motion to compel.

Verizon states that AT&T has failed to provide a simple "yes" or "no" answer to VZ-ATT 1-67, asking whether it is "Dr. Mercer's position that TELRIC costs should not be based on the design of an actual physical telecommunications network." While Verizon did ask that AT&T "explain" the answer in detail, the fact remains that AT&T's response does not actually provide a clear yes or no answer to be explained, but merely reiterates direct testimony. The motion to compel a response to VZ-ATT 1-67 is granted.

In objection to the information requests regarding AT&T's network, AT&T states that its own operational experience is not relevant to Verizon's forward-looking economic costs to provide UNEs. Verizon argues that AT&T's network is directly relevant as a benchmark for evaluation of the HAI 5.2a-MA Model. However, while Verizon's model in this proceeding incorporates historical embedded costs, AT&T has indicated that the HAI 5.2a-MA Model is not based on AT&T's historical costs, and thus the information Verizon seeks would not serve

as any useful benchmark. The Hearing Officer finds that the information on AT&T's network is therefore not crucial to evaluation of the model it is sponsoring, and hereby denies the motion to compel responses to VZ-ATT 1-38, 1-39, 1-70, 1-79, 1-114 through 1-128, 1-131, 1-135, 2-1, 2-15, and 2-91.

Verizon asserts that AT&T has failed to provide key information involving inputs into the HAI 5.2a-MA Model in VZ-ATT 1-20, 1-21, 1-23, 1-25, 1-26, 1-82, 1-83, 2-62 because it is "commercially available" or, in the case of VZ-ATT 2-4 and 2-32, publicly available. The mere fact that information is commercially available does not provide sufficient basis for an objection. We note that parties, as well as the Department, have routinely requested information through discovery that has been available, commercially or otherwise, from other sources; yet efficiency dictates, in most cases, that the requested information be produced. AT&T states that Verizon improperly included VZ-ATT 1-20 in the category, because AT&T provided a response to the question without objection and the response does not involve proprietary or commercially available information. The motion to compel with respect to VZ-ATT 1-20 is denied, because AT&T has answered the question.

The information requested in VZ-ATT 2-4 and 2-32 is U.S. Census data, and is readily available for AT&T to provide in support of its case. The motion to compel responses to these two questions is granted. On the other hand, the Department cannot order AT&T to provide materials in this case that AT&T has indicated are intellectual property of an outside vendor and that it does not have and/or is not authorized to provide. Accordingly, Verizon's motion to compel responses to VZ-ATT 1-21, 1-23, 1-25, 1-26, 1-82, 1-83, and 2-62 must be denied on

that basis. Nevertheless, AT&T has the burden in this proceeding to provide the necessary information for proper evaluation of the HAI 5.2a-MA Model by Verizon, as well as the Department and other parties, and must facilitate any arrangements necessary for Verizon to obtain the data. We note that the Federal Communications Commission ("FCC"), in adopting a forward-looking cost model to be used in determining federal universal service high-cost support for non-rural carriers, stated that the "model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment."¹⁰ In selecting input values for the model it had adopted, the FCC rejected geocode data prepared for the HAI Model by PNR as insufficiently available for public review because of the conditions and expense in obtaining the PNR geocode data, which relied on third-party data that PNR was not permitted to disclose.¹¹ In this proceeding, AT&T likewise must ensure that its HAI 5.2a-MA Model and its inputs are sufficiently available for public review.

Questions VZ-ATT 1-57 through 1-60, involving ownership and restrictions on use of the HAI 5.2a-MA Model, are also relevant to determining whether the HAI Model and inputs are available for meaningful public review. The motion to compel responses to VZ-ATT 1-57 through 1-60 is granted.

AT&T objects to questions regarding prior versions of the HAI Model on grounds that

¹⁰ Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, Tenth Report, FCC 99-304, at ¶ 38 (rel. November 2, 1999).

¹¹ See id. at ¶¶ 37-39.

the only relevant version of the model is the HAI 5.2a-MA version filed in this proceeding.

AT&T asserts in direct testimony that the Department's concerns in the Consolidated Arbitrations with the prior HAI Model have been addressed and resolved in the current version (See Direct Testimony of Robert A. Mercer at 35-38). The Mercer testimony compares and summarizes key differences between HAI 2.2.2 and HAI 5.2a-MA (id. at 30-38). However, it is reasonable to conclude that the effort to resolve the Department's concerns with HAI 2.2.2 did not involve a single step from 2.2.2 to HAI 5.2a-MA, but a series of steps between 2.2.2 through the development of the current version of the model. For example, AT&T witness Donovan raises changes from the HAI 4.0 Model (See Direct Testimony of John C. Donovan at 12). Because the current version of the HAI 5.2a-MA has been developed from previous versions filed with the Department and in other jurisdictions, questions regarding changes in the model are relevant to determining the reliability of the current model and to evaluate whether the Department's concerns have actually been addressed. The Hearing Officer therefore grants Verizon's motion to compel responses to VZ-ATT 1-34, 1-35, 1-65, 1-66, 1-68, 1-80 through 1-90, 1-112.

AT&T objects to information request VZ-ATT 2-11 on grounds that it seeks information on earlier versions of the HAI Model, and on grounds that it requests information AT&T has already made available. With regard to the first objection, as stated above, information on earlier versions of the HAI Model is relevant to evaluation of the current model. With regard to the second objection, Verizon states that AT&T's response is incomplete: the information AT&T provides indicates cost inputs actually used in the model, but Verizon has asked for all

data provided to AT&T, including inputs that were rejected by the model developers (VZ Motion at 15). By providing only the inputs actually used in the model, AT&T may be providing only those inputs that guarantee results favorable to AT&T's position. Data indicating which inputs the model developers rejected is relevant to show why the inputs actually used were selected, and, as Verizon states, this information could support or undermine the inputs used (VZ Motion at 16). The motion to compel a response to VZ-ATT 2-11 is granted.

According to Verizon, the section of the Model Description to which AT&T refers in its response to VZ-ATT 1-24 does not provide a fully responsive answer because, while it discusses the procedure for normalizing line counts, it does not explain the basis for the additions or reductions to specific census blocks (id. at 15). VZ-ATT 1-24 requests that the response state the basis for the additions or reductions to specific census blocks; therefore the response is incomplete and the motion to compel is granted for this question.

Regarding VZ-ATT 1-130, AT&T objects to providing the cost of money used by the TICM because AT&T no longer uses that model and recreating it would be unduly burdensome. Because the model is no longer used and is not put forth by AT&T in this proceeding, the Hearing Officer finds that the requested information is not relevant to evaluating the HAI 5.2a-MA Model and not reasonably calculated to lead to discovery of admissible evidence. The motion to compel response to VZ-ATT 1-130 is denied.

AT&T has responded to VZ-ATT 1-103 and 2-3 that documentation related to development of the Business Penetration Ratio and time estimates for drop wire installation does not exist; thus the motion to compel these responses is also denied.

Finally, the record shows that AT&T supplemented its response to VZ-ATT 1-16 on July 13, 2001, and the motion to compel is denied as moot.

IV. CLEC COALITION MOTION TO COMPEL

A. INTRODUCTION

On July 23, 2001, the CLEC Coalition filed with the Department a Motion to Compel Discovery in regard to Verizon's responses to Information Requests CC 7-1, CC 10-8 and CC 10-9. On July 31, 2001, Verizon filed with the Department an Opposition to the CLEC Coalition's Motion to Compel. CC 7-1, served June 8, 2001, requests copies of workpapers showing development of Current Cost/Book Cost ("CC/BC") ratios contained in the CD-ROM supporting Part G (Investment Loadings) to Verizon's Initial Panel Testimony. On June 25, 2001, the CLEC Coalition served CC 10-8, elaborating that it seeks in CC 7-1 information on CC/BC ratios similar to that provided by Verizon in its TELRIC proceeding in New York; and CC 10-9, which inquires whether any of Verizon's current plant-in-service is beyond the economic lives it proposes for depreciation in this case. Verizon responded to CC 7-1 on June 14, 2001 and to CC 10-8 and 10-9 on July 2, 2001, objecting to these Information Requests as not reasonably calculated to lead to the discovery of admissible evidence.

B. POSITIONS OF THE PARTIES

1. CLEC Coalition

The CLEC Coalition argues that Verizon's objection is denying it discovery of facts that will support the CLEC Coalition's theory of the case, is preventing the CLEC Coalition from providing rebuttal testimony that addresses the assumptions Verizon used in deriving its ACFs,

and denying the CLEC Coalition its due process rights to cross-examine witnesses pursuant to G.L. c. 30A, § 11(3) (CLEC Motion at 4). The CLEC Coalition states that the responses it seeks to compel are necessary to evaluate the appropriateness of one of the assumptions Verizon uses in formulating network annual charge factors ("ACFs") (CLEC Motion at 1). The Information Requests asked for information pertaining to the age and cost of Verizon's plant-in-service, the CLEC Coalition states, because Verizon's cost studies based the network ACFs in part upon Verizon's past maintenance expenditures, and maintenance expenditures are sensitive to the age of plant-in-service (id. at 2). According to the CLEC Coalition, higher maintenance expenses are generally associated with older equipment that is beyond its useful life, while the forward-looking network upon which costs must be based would not include such antiquated plant (id.). In CC 10-8, the CLEC Coalition stated that it sought CC/BC ratios because, while they "may or may not be part of the determination of investment loading factors, these ratios and the supporting telephone plant indices provide relevant information on the age and cost of Verizon's historical plant-in-service compared to replacement cost."

The CLEC Coalition cites the Rebuttal Testimony of its witness Warren R. Fischer, who testifies that plant that is beyond its economic life generates a disproportionate share of book network expenses used to calculate network factors and asserts that there is a "high probability" that Verizon's current expense-to-investment ratios are inflated by the inclusion of aged and obsolete equipment (id. at 4, citing CLEC Coalition Rebuttal Testimony of Fischer at 27-28). Because QSI Consulting determined in the New York proceeding that approximately 27 percent of Verizon's digital plant-in-service was beyond Verizon's estimation of its

economic useful life, the CLEC Coalition states, Mr. Fischer attempted to obtain Massachusetts-specific information to determine whether a similar circumstance is present in Verizon's Massachusetts studies (id., citing CLEC Coalition Rebuttal Testimony of Fischer at 27-28). In New York, Verizon produced similar information to that now requested in this proceeding, the CLEC Coalition notes (CLEC Motion at 5).

2. Verizon

Verizon states that it objected to CC 7-1 as irrelevant because CC/BC ratios, comparing current cost of Verizon's plant investment to the book cost for the same investment, were not used to develop Verizon's Investment Loadings, and their inclusion in the CD-ROM was mistaken (VZ Opposition at 2-3). Verizon objected again to providing the information in CC 10-8, because, although it used CC/BC ratios in the New York TELRIC proceeding, it did not rely on the information in Massachusetts (id.) In explaining its objection, Verizon states:

While it is true that CC/BC ratios provide information on the age and cost of Verizon's historical plant-in-service compared to replacement cost, neither historical plant-in-service nor the replacement of such plant form the basis of the forward-looking TELRIC investments underlying the UNE studies at issue in this proceeding (CC 10-8 Reply).

Verizon objected to CC 10-9 for the same reason (VZ Opposition at 4). Verizon maintains that, because the age and life of its plant are not dispositive of the forward-looking economic lives Verizon established, they are not relevant to this case (id.)

C. ANALYSIS AND FINDINGS

Verizon states that its historical plant-in-service does not form the basis of forward-looking TELRIC investments; however, in describing the methodology Verizon employed to

develop the network ACFs, Verizon's Initial Panel Testimony states that the "starting point" was expenses incurred in 1999 for repairing and rearranging plant and equipment (Verizon Initial Panel Testimony at 42). If Verizon based network ACFs in part upon past maintenance expenditures as the CLEC Coalition asserts, the information is relevant to evaluating the appropriateness of assumptions Verizon used in formulating ACFs and may lead to the discovery of admissible evidence. The motion to compel a response to CC 10-9 is granted.

Verizon states that CC/BC ratios were not used in developing its Investment Loading Factors for Massachusetts. The parties in this proceeding agree that network forward-looking expenses can be estimated using expense-to-investment ratio (E/I ratio). However, different parties use different formulas in calculating E/I ratio. Verizon uses forward-looking expense-to-current investment, adjusted by a forward-to-current investment ratio (i.e., the Forward-Looking Conversion Factor) and calls it the adjusted Annual Cost Factor (Verizon Initial Panel Testimony at 60). Z-Tel Communications, on the other hand, uses historical expense-to-historical investment (See Z-Tel Rebuttal Testimony Attachment A at A-1). The FCC calculates forward-looking expenses using current expense-to-historic investment, adjusted by a current-to-book investment ratio. See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, FCC 99-304 at ¶ 341 (rel. Nov. 2, 1999). There is no consensus in this proceeding as to the method for calculating the E/I ratio, and the FCC clearly used a current-to-book investment ratio in estimating forward-looking expenses. Therefore, the Hearing Officer finds that the information that the CLEC Coalition seeks regarding Verizon's

development of CC/BC ratios is relevant and may lead to the discovery of admissible evidence.

The motion to compel responses to CC 7-1 and 10-8 is granted.

V. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants in part and denies in part the Motion to Compel Discovery filed by Verizon New England, Inc. d/b/a Verizon Massachusetts. The Motion to Compel is granted with respect to Information Requests VZ-ATT 1-24, 1-34, 1-35, 1-57 through 1-60, 1-65, 1-66, 1-67, 1-68, 1-80 through 1-90, 1-112, 2-4, 2-11 and 2-32, and denied with respect to Information Requests VZ-ATT 1-16, 1-20, 1-21, 1-23, 1-25, 1-26, 1-38, 1-39, 1-70, 1-79, 1-82, 1-83, 1-114 through 1-128, 1-130, 1-131, 1-135, 2-1, 2-15, 2-62 and 2-91.

After due consideration, the Hearing Officer hereby grants the Motion to Compel Discovery responses CC 7-1, 10-8 and 10-9 filed by Allegiance Telecom of Massachusetts, Inc., Covad Communications Company, El Paso Networks, LLC, and Network Plus, Inc. ("CLEC Coalition").

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by **August 13, 2001, at 5:00 p.m.** A copy of this Ruling must accompany any appeal. Any

response to any appeal must be filed by **5:00 p.m. August 16, 2001.**

Marcella Hickey, Hearing Officer

Date: August 8, 2001